

the public, and the court held that though this was a private proprietor, the more he opened it up to the public the more the 14th Amendment protections applied. The court held that, therefore, if that private property opened up and dedicated to a public use was open to the general public, then that private proprietor could not refuse to serve any member of the general public because of that member's race. So here is an element where you had a private ownership, but the service that was offered was offered to the public.

However, in *Belle v. Maryland*, in a decision concurred in by Chief Justice Warren, Justice Goldberg and Justice Douglas, there is this statement which came down in 1964: "Prejudice and bigotry in any form are regrettable, but it is the constitutional right of every person to close his home or private club to any person or to choose his social intimates and business partners is solely on the basis of personal prejudices, including race. These and other rights pertaining to privacy and private association are themselves constitutionally protected liberties."

"We deal here," and then he was talking about the restaurant, "however, with the claim of equal access to public accommodations. This is not a claim which significantly impinges upon personal association interests. The proprietor's interests in private or unrestricted association is light. The relationship between the modern innkeeper or restaurant owner and the customer is relatively impersonal and evanescent." Then it says, "The history and purpose of the 14th Amendment compel the conclusion that when the proprietor opened up his private property to the general public, then the State could not enforce his personal discrimination, because it was a balancing of the interests, and the proprietor could not deny to a substantial section of the public the equal protection of the laws which the 13th and 14th and 15th Amendments to the Federal Constitution had already indicated."

THE CHAIRMAN: Delegate Hostetter.

DELEGATE HOSTETTER: At the conclusion of your minority report, Delegate Mitchell, you set forth a basic policy wherein you list a number of items.

One of the items listed is licensees. A point of clarification. Are lawyers considered as licensees and as such operating under the authority of the State?

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: There has not been a case brought to the Supreme Court in that area, Delegate Hostetter. I would say that when the Supreme Court has interpreted what is state action, the determination evolved upon the circumstances of each case, but I am sure members of the general public who would want a lawyer's services would not go to a lawyer who did not want to represent them.

THE CHAIRMAN: Delegate Hostetter.

DELEGATE HOSTETTER: Would a corporate charter fall within the scope of this amendment of the minority?

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: In the *Belle Case*, the Supreme Court, in the concurring opinions of Justices Goldberg, Warren and Douglas, appended a list of the private proprietors in these public accommodations who had discriminated. In only one case was there a purely private and non-corporate proprietor of a public accommodation. All the rest of the cases that had flooded into the Court after the student movement of 1960 to open up were places of public accommodation, all corporations, like the Hot Shoppes, the various restaurant chains and the ten cent stores. I would say it depends upon the facts and circumstances of the case as to whether corporate charter is involved.

If the corporation performs a service to the general public and intends to profit from the general public, and if it in fact admits members of the general public who are white but excludes Negro citizens or Jewish citizens, or Polish citizens or Indians or what not, then, that action would fall under protection of the 14th Amendment.

THE CHAIRMAN: Delegate Hostetter.

DELEGATE HOSTETTER: But you do mean discrimination by the State or state action to include licensees?

THE CHAIRMAN: Delegate Mitchell.

DELEGATE MITCHELL: Licensees who perform public functions, as I have said, who open up their activities to the general public, and admit to their facilities members of the general public, but exclude a minority because of race, religion or national origin.

THE CHAIRMAN: Delegate Hostetter.

DELEGATE HOSTETTER: I was looking at the sections from other constitutions at the end of the minority report here.